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April 11, 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: **Federal-State Joint Board on Universal Service,
CC Docket No. 96-45**

Dear Ms. Salas:

On behalf of the Competitive Universal Service Coalition ("CUSC"), I am transmitting draft rules for the Code of Federal Regulations ("CFR") that would implement the recommendations of the Rural Task Force regarding portability and other issues involving the provision of support to competitive eligible telecommunications carriers ("ETCs"). The attached draft rules are in the format used by the Commission to transmit formal CFR rules, and are accompanied by italicized comments explaining the function of each of these rules.

In particular, these draft rules implement the following RTF recommendations:

- *Portability of Per Line Support* (RTF Recommendation, page 36): The attached draft revises § 54.307(a) to make it more clear that ETCs receive an identical amount of support per-line as incumbent local exchange carriers ("ETCs") in each geographic area.
- *Transparency of Universal Service Support* (RTF Recommendation, pages 36-37): The attached draft supplies a new § 54.307(b), which requires the Universal Service Administrative Corp. to publish a clear matrix displaying the amounts of per-line support that will be disbursed each month to each ETC operating in each geographic area. (Such a matrix currently is not available.)

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- *Frequency of Reporting and Lag in Support* (RTF Recommendation, page 37): The attached draft includes a new § 54.308 that would require each ETC to report line counts on a quarterly basis, and would enable USAC to compute and disburse funding on that basis the following quarter. It thus shortens the funding lag to a single calendar quarter. The draft, based on § 54.802(a) (reporting for interstate access-related support to non-rural carriers under the CALLS plan), also establishes a single reporting requirement that applies equally to ILECs and competitive ETCs, and thus replaces the disparate provisions currently found at §§ 36.611(h) and 54.307(b) & (c).
- *Identification of Service Locations* (RTF Recommendation, page 37): The attached draft includes a new § 54.307(a) that implements the RTF recommendation that the geographic area in which a competitive ETC's customer's line is located shall be determined based on the customer's business or residence location. The draft is framed in technology-neutral language.
- *Geographic Disaggregation* (RTF Recommendation, pages 33-36): The attached draft includes revisions to § 54.207 that incorporates the RTF recommendations to streamline the process for geographic disaggregation of service areas. Consistent with CUSC's comments on this point, the attached draft enables either an ILEC, a competitive ETC, a state commission, or the FCC to initiate the disaggregation proceeding, and provides that if the proposed disaggregation is not contested, it takes effect within 60 days. It also provides that if the state commission asks the Commission to open a proceeding, the Commission is required to do, but that if the state does not raise any objections, its approval (required under Section 214(e)(5) of the Act) is presumed.
- *Certification Process*. To facilitate competitive neutrality, the attached draft includes a revised version of § 54.313 that would require rural ILECs to obtain state certification that they are using all support in a manner consistent with Section 254(e) of the Act. (Such certification is already required of non-rural ILECs). Since competitive ETCs are not

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subject to state rate regulation, the attached draft permits competitive ETCs to self-certify their compliance with Section 254(e), rather than obtaining state certification to that effect. As an alternative, CUSC would not oppose eliminating the state certification requirement for rural and non-rural ILECs, and having all ETCs, including ILECs as well as competitive ETCs, self-certify their compliance with section 254(e) of the Act.

The attached draft does not address the RTF's funding recommendations. We note, however, that some of the rule provisions in the attached draft – particularly those regarding the process for geographic disaggregation – differ significantly from those proposed in the draft submitted by Jeffrey H. Smith of GVNW Consulting on behalf of the Rural Leadership Coalition on Feb. 15, 2001. With all due respect, CUSC submits that the attached draft would better implement the spirit of the RTF's recommendations and would more effectively carry out the Commission's policy goals.

If you have any questions, please contact me.

Respectfully submitted,



David L. Sieradzki
Counsel for the Competitive Universal
Service Coalition

Enclosures

cc: Katherine Schroder
Sharon Webber
Gene Fullano
Katie King
Greg Guice
Bill Scher

APPENDIX A

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

**PART 36 – JURISDICTIONAL SEPARATIONS PROCEDURES;
STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS
PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES
FOR TELECOMMUNICATIONS COMPANIES**

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 254, 403 and 410.

2. Section 36.611 is amended by revising paragraph (h) to read as follows:

§ 36.611 Submission of information to the National Exchange Carrier Association (NECA)

* * * * *

- (h) The information provided pursuant to § 54.308 of this chapter.

COMMENT: To implement the RTF's recommendation regarding the frequency of reporting and lag in support (page 37), a new section 54.308 is created to replace the existing section 36.611(h) regarding ILECs' obligations to submit line count data. The new section also replaces sections 54.307(b) and (c) regarding competitive ETCs' obligations to submit line count data, and provides competitively neutral data collection requirements, based on 54.802(a), that apply to all ETCs.

3. Part 36 Appendix – Glossary is amended to add the following defined terms, to be inserted in alphabetical order:

Incumbent Local Exchange Carrier (Incumbent LEC) has the same meaning as that term is defined in § 51.5 of this chapter.

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Competitive Eligible Telecommunications Carrier (Competitive ETC) has the same meaning as that term is defined in § 54.5 of this chapter.

PART 54 – UNIVERSAL SERVICE

1. The authority citation is amended to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 201, 205, 214 and 254 unless otherwise noted.

COMMENT: Corrects an incorrect citation in the authority citation.

2. Section 54.207 is amended by adding text to the end of paragraph (a), adding text to the end of paragraph (b), revising paragraph (c), and adding the following new paragraph (f), to read as follows:

COMMENT: The revisions to section 54.207 below implement the RTF's recommendations regarding a streamlined process for disaggregating support for zones smaller than pre-existing study areas (pages 34-36). They also take into account CUSC's comments regarding this recommendation. Specifically, the added language to paragraph (a) below ensures competitive neutrality by using identical geographic definitions to disaggregate both service areas used for funding and service areas used for ETC designation. The revisions to paragraph (b) below implement the RTF's recommendations to establish a self-certification process for disaggregating service areas, consistent with the statutory requirement that both the FCC and the state commission be given an opportunity to pass on such disaggregation proposals.

§ 54.207 Service areas.

(a) * * * Identical service areas shall be used for the designation of eligible telecommunications carriers pursuant to this Part 54, subpart C, and for the computation and disbursement of universal service support pursuant to Part 36, subpart F, and Part 54, subpart D.

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(b) * * * Such different definition shall be established pursuant to the procedures set forth in this section.

(c) *If the Commission on its own motion, a state commission, or any party that provides or proposes to provide universal service to the relevant area proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission and the state commission will consider that proposed definition in accordance with the procedures set forth in this paragraph. ^{1/}*

(1) ~~The A state commission or other party seeking the Commission's and the state commission's agreement in redefining a service area served by a rural telephone company shall submit a petition to the Commission and shall serve a copy upon the relevant state commission.~~ The petition shall contain:

(i) ~~The definition proposed by the party state commission.~~
(in the case of a proposed service area that corresponds to one or more wire centers, the petition shall include a list of the wire centers comprising such service area, using the common name and CLLI code for such wire centers; in the case of a service area that does not correspond to one or more wire centers, the petition shall include a detailed description of the precise boundaries of such proposed service area); and

(ii) ~~The state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.~~

(2) The Commission shall issue a Public Notice of any such petition within fourteen (14) days of its receipt. *The Secretary of the Commission shall send a copy of such Public Notice to the state commission by certified mail.*

(3) The Commission *shall* ~~may~~ initiate a proceeding to consider the petition, *if the relevant state commission submits a request for such a proceeding, and may do so otherwise, within sixty (60) ~~ninety (90)~~ days of the release date of the Public Notice.*

(i) If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state

^{1/} In this draft section 54.207(c) and in draft section 54.307(a) below, which are largely based on the existing rules, we have indicated our specific revisions (in italics or strikeout text). Most of the other sections in these draft rules contain mostly new language, and so no attempt is made to show the revisions from the existing rules.

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commission and the Commission agree upon the definition of a rural service area, in accordance with paragraph (b) of this section and section 214(e)(5) of the Act.

(ii) If the Commission does not *initiate a proceeding or otherwise* act on the petition within ninety (90) days of the release date of the Public Notice, the definition proposed ~~by the state commission~~ will be deemed approved by the Commission *and by the relevant state commission* and shall take effect in accordance with *the Commission's rules and state procedures*.

(d) [Reserved.]

(e) The Commission delegates its authority under paragraphs (c) ~~and (d)~~ of this section to the Chief, Common Carrier Bureau.

3. Section 54.307 is amended by revising paragraphs (a), (a)(1), and (b) to read as follows, and by removing and reserving paragraph (c):

COMMENT: To implement the RTF's recommendation regarding the frequency of reporting and lag in support (page 37), the existing versions of 54.307(b) and (c) (regarding competitive ETCs' obligations to submit line count data) are deleted and replaced by a new section 54.308. The new section also replaces section 36.611(h) regarding ILECs' obligations to submit line count data, and provides competitively neutral data collection requirements, based on 54.802(a), that apply to all ETCs.

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) *Calculation of support.* A competitive eligible telecommunications carrier shall receive *the same amount of universal service support per line (including, but not limited to, support pursuant to §§ 54.301, 54.303, 54.309, 54.311, and/or Part 36, subpart F of this chapter) in each geographic area as the amount per line that to the extent that the competitive eligible telecommunications carrier captures the subscriber lines of an* the incumbent local exchange carrier (LEC) *receives in such geographic area, except as provided in paragraphs (a)(2) and (a)(4) of this section or serves new subscriber lines in the incumbent LEC's service area.*

COMMENT: The above paragraph implements the RTF's recommendation on portability of per-line support (page 36). Specifically, it clarifies the

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existing text of 54.307(a) and (a)(1) by eliminating the confusing reference in existing paragraph (a) to the competitive ETC's "capturing" ILEC lines or serving "new" lines, and instead simply referring to per-line support.

(1) The geographic area in which a competitive eligible telecommunications carrier's customer's line is located shall be determined based on the customer's business or residence location.

COMMENT: The above paragraph incorporates the RTF recommendation regarding identification of service locations of wireless mobile carriers' customers (page 37), but uses technology neutral language.

(2) * * *

(3) * * *

(4) * * *

(b) The Administrator shall not disburse any universal service support pursuant to §§ 54.301, 54.303, 54.307, 54.309, 54.311, 54.807, or Part 36, subpart F of this chapter, unless it first makes available, on a publicly viewable Internet site and in a commonly available file format, a single, complete table or matrix that clearly displays the total per-line amount of such support per month that will be disbursed to each eligible telecommunications carrier for each geographic area. For this purpose, the table or matrix shall identify geographic areas that correspond to one or more wire centers using the common name and CLLI code for such wire centers. For geographic areas that do not correspond to wire centers, the Administrator shall make available on its Internet site a detailed description of the precise boundaries of each such geographic area.

COMMENT: The above paragraph (replacing the pre-existing paragraph (b)) implements the RTF's recommendation regarding transparency of universal service support (pages 36-37), by requiring USAC to make available detailed information about the per-line amounts available before it disburses any support.

4. A new Section 54.308 is added to read as follows:

§ 54.308 Reporting of line counts to the Administrator.

(a) Each eligible telecommunications carrier shall submit to the Administrator, on a quarterly basis on the last business day of March, June, September, and December of each year, line count data showing the number of lines it serves for the period ending three months prior to the reporting date, within each service area served by a rural telephone company, and the number of lines it serves within each wire center in each service area served by a non-rural incumbent local exchange carrier.

(b) For purposes of this section, a line shall be defined as a subscriber line that, if provided by an incumbent local exchange carrier, is assessed the End User Common Line charge pursuant to §§ 69.104 and 69.152 of this chapter, or an equivalent offering by a competitive eligible telecommunications carrier.

COMMENT: This new section implements the RTF's recommendation regarding the frequency of reporting and lag in support (page 37), and establishes a competitively neutral line count reporting obligation that applies equally to ILECs and competitive ETCs. This draft uses data for the end of the preceding quarter, rather than data for the average of the preceding quarter's data (beginning of quarter plus end of quarter divided by two), as RTF had suggested. This shortens the lag time between the provision of service and receipt of universal service funding to 3 months (rather than 4½ months, as per the RTF recommendation), and reduces data collection burdens on carriers (because the data would be identical to that required in Section 54.802).

5. Section 54.313 is amended by revising paragraph (a), adding paragraphs (a)(1), (b), (b)(1), (b)(2), and (b)(3), and redesignating existing paragraph (b) as paragraph (a)(2), to read as follows:

§ 54.313 Certification

(a) *State certification of incumbent local exchange carriers.*

(1) *Certification.* States that desire ~~non-rural~~ incumbent local exchange carriers ~~and/or eligible telecommunications carriers serving lines in the service area of a non-rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§ 54.301, 54.303, 54.309, and/or 54.311,~~

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and/or Part 36, subpart F of this chapter must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to ~~pursuant to §§ 54.301, 54.303, 54.309, and/or 54.311, and/or Part 36, subpart F of this chapter~~ shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

(2) *Certification format.* * * *

(b) *Self-certification of competitive eligible telecommunications carriers.*

(1) *Certification.* Competitive eligible telecommunications carriers that desire to receive support pursuant to §§ 54.301, 54.303, 54.307, 54.309, 54.311, and/or Part 36, subpart F of this chapter must file a certification with the Administrator and the Commission stating that all universal service support provided to such carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to §§ 54.301, 54.303, 54.307, 54.309, 54.311, and/or Part 36, subpart F of this chapter shall only be provided to the extent that the carrier has filed the requisite certification pursuant to this section.

(2) *Certification format.* A certification pursuant to paragraph (b)(1) may be filed in the form of a letter from an authorized representative for the carrier, and must be filed with both the Office of the Secretary of the Commission clearly referencing CC Docket No. 96-45, and with the Administrator, on or before the filing deadlines set forth in paragraph (b)(3). All of the certifications filed by carriers pursuant to this section shall become part of the public record maintained by the Commission.

(3) *Filing deadlines.* In order for a competitive eligible telecommunications carrier to receive universal service support pursuant to § 54.307, such carrier must file an annual certification, as described in paragraph (b)(2) of this section, on the date that it first files its line count information pursuant to § 54.308, and thereafter on June 30th of each year.

COMMENT: Paragraph (b) – self-certification by competitive ETCs – is intended to implement the RTF’s recommendation regarding shortening the lag between the provision of service and receipt of universal service funding. An unnecessary lag is often created by the current provision, which

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requires state commissions to submit certifications regarding competitive ETCs' compliance with Section 254(e) of the Act. Also, this provision makes no sense, because state commissions do not regulate the rates of competitive ETCs.

The revisions to paragraph (a) are intended to apply the current state certification requirement to rural ILECs as well as non-rural ILECs. As an alternative, CUSC would not oppose eliminating the state certification requirement for ILECs, and having all ETCs, including ILECs as well as competitive ETCs, self-certify their compliance with section 254(e) of the Act.